411.0

BILL NO. S-78-06- 34

SPECIAL ORDINANCE NO. S- 112-78

AN ORDINANCE approving an Agreement with Nelson R. Minnick, for construction of a sanitary sewer.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Agreement dated June 12, 1978, between the City of Fort Wayne, by and through its Mayor and the Board of Public Works and Nelson R. Minnick, Developer, for:

SANITARY SEWER

Beginning at an existing Manhole #72 (Resolution #273, St. Joe Interceptor Sewer); thence Northeasterly 345 feet to the Southwest corner of a certain 2.11 acre tract in the Southeast corner of the Southwest Quarter of the Northwest Quarter of Section 32, Township 32 North, Range 12 East, in Perry Township; thence Northerly, along the West line of said 2.11 acre tract, a distance of 200 feet to the point of termination.

of which the developer shall pay the entire cost and expense of the construction of said sewer, all as more particularly set forth in said agreement which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Councilman

APPROVED AS TO FORM
AND LEGALITY,

CITY ATTORNEY

Read the first time in full and on motion by Burns, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and ~~the City Plan Commission~~ for ~~recommendation) and Public Hearing to be held after due legal notice, at the Council~~ Chambers, ~~City-County Building~~, Fort Wayne, Indiana, on _____, the _____ day of ~~_____~~, 19__ at _____ o'clock ____ M., E.S.T.

DATE: 6-27-78

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Hinga, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	8	0		1	
BURNS	X				
HINGA	X				
HUNTER	X				
MOSES	X				
NUCKOLS	X				
SCHMIDT, D.	X				
SCHMIDT, V.				X	
STIER	X				
TALARICO	X				

DATE: 7-11-78

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) No. S-112-78 on the 11th day of July, 19 78

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of July, 19 78, at the hour of 11:30 o'clock A M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 18th day of July, 19 78, at the hour of 4:00 o'clock P M., E.S.T.

Robert E. Armstrong
MAYOR

Bill No. S-78-06-34

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance approving an Agreement with Nelson R. Minnick, for construction of a sanitary sewer

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance DO PASS.

PAUL M. BURNS - CHAIRMAN

JAMES S. STIER - VICE CHAIRMAN

VIVIAN G. SCHMIDT

WINFIELD C. MOSES, JR.

FREDRICK R. HUNTER

7-11-78
DATE

CONCURRED IN
CHARLES W. WESTERMAN, CITY CLERK

66-51-13 H.I. 6/12/78

AGREEMENT
FOR
SEWER EXTENSION

THIS AGREEMENT, made in triplicate this 12 day of June, 1978, by and between Nelson R. Minnick, hereinafter referred to as "Developer", and the CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, hereinafter referred to as "City".

WITNESSETH:

WHEREAS, the Developer desires to construct a sanitary sewer described as follows: Beginning at an existing Manhole #72 (Resolution #273 St. Joe Interceptor Sewer); thence Northeasterly 345 feet to the Southwest corner of a certain 2.11 acre tract in the Southeast corner of the Southwest Quarter of the Northwest Quarter of Section 32, Township 32 North, Range 12 East, in Perry Township; thence Northerly, along the West line of said 2.11 acre tract, a distance of 200 feet to the point of termination. / in accordance with plans, specifications and profiles heretofore submitted to the City and now on file in the Office of the Chief Engineer of the Water Pollution Control Utilities of the City, and known as Nelson R. Minnick Sanitary Sewer which plans, specifications, and profiles are by reference incorporated herein and made a part hereof, which sewer will serve not only land in which the Developer has an interest, but also an adjoining land areas.

WHEREAS, the total cost of construction of said sewer is represented to be $6,000.00.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER

The Developer shall cause said sewer to be constructed and located in accordance with said plans, specifications, and profiles, all approved by the City, under private contract to be let within sixty (60) days after requisite City approval. All work and materials shall be subject to inspection by City and the right of City to halt construction if there shall be noncompliance therewith. Said sewer shall not be deemed permanently connected into the sewer system of City until final acceptance by City. Upon completion, said sewer shall become the property of City and City shall accept sewage therefrom, subject to such sewage service charges as may now or hereafter be regularly established by City, and all further maintenance thereafter shall be borne by City.

2. COST OF CONSTRUCTION

The Developer agrees to pay the entire cost and expense of construction of said sewer, in cash, including City engineering and inspection fees, and to hold the City harmless from any liability for claims connected therewith.

3. AREA OF DEVELOPER

Said sewer when accepted by the City will serve the following described real estate: 2.11 acres in the Southeast corner of the Southwest Quarter of the Northwest Quarter of Section 32, Township 32 North, Range 12 East, in Perry Township, which 2.11 acre tract is more particularly described as follows:

Commencing at a point where the South line of said tract intersects the West boundary line of the Lima Road; thence North along the West line of said Lima Road 369 feet; thence West parallel with the South line of said Quarter Quarter Section a distance of 248.5 feet; thence South parallel with the Lima Road 372 feet to the South line of said quarter quarter section; thence East 248.5 feet to the place of beginning.

Subject to a grant of right of way to the State of Indiana by grant dated April 4, 1961, recorded in Deed Record 586, Page 256, in the Office of the Recorder of Allen County, Indiana.

An area connection charge of $475.00 per acre must be paid to City at the time of connection. This area connection charge represents the oversizing cost expended by City for sewer line per Resolution 61-140-11.

As the Developer will pay for the cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this Agreement against the above described real estate for the construction of said sewer by the present or future owners of said real estate except only as to such standard tap-in, inspection fees and monthly sewage treatment charges as are customarily charged by the City for connections to City sewer mains and treatment of sewage therefrom.

4. CHARGE AGAINST EXCESS AREA

Said sewer, when constructed, will also serve the additional or excess area. No local sewer extension charges shall be made against excess area by this agreement. An area connection charge of $475.00 per acre must be paid to City at the time of connection. This area connection charge represents the oversizing cost expended by City for sewer lines per Resolution #61-140-11.

5. BOND

This contract is subject to Developer furnishing a satisfactory Performance and Guaranty Bond for the value of the sewer which shall guarantee said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by the City.

6. LIMITATIONS ON USE

Said Sewer shall be constructed for disposal of sanitary sewage only and neither the parties hereto, their successors, or assigns, or any future owner of any land serviced by said sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer, any water runoff caused by natural precipitation or anything other that sanitary sewage or contaminated waste.

7. WAIVER OR RIGHT TO REMONSTRATE AGAINST ANNEXATION

The Developer, for himself, his successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of any territory now or hereafter owned by him, as described in Article 3 herein, or hereafter served by said sewer or any extension thereof. Pursuant to Burns Indiana Statutes Anno. I. C. 19-2-7-16, 17, & 18.

In further consideration and to induce City to execute and ratify this contract, said Developer, for himself, his successors and assigns, agrees by this contract to vest in City the permanent right at its discretion to annex to the City of Fort Wayne at any future time by duly authorized ordinance the said real estate described in Article 3 herein.

Developer further agrees that any deeds, contracts, or other instruments of conveyance made by the Developer, its successors or assigns transferring or conveying any interest in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in this article, which provisions shall run with the land and the acceptance of the delivery of any such instrument from the Developer, his successors and assigns by any grantee, vendee, or contract purchaser, shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee, or contract purchaser and their successors in title.

The Developer further agrees to record an executed copy of this contract in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of City as hereinafter provided.

Any owner or owners of land which is now, or hereafter located outside the corporate limits of City who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of such land or of the territory in which it is located or of the area served by said sewer.

8. GOVERNING STATUTE

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Sections 16, 17, and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana (I.C. 19-2-7-16, I.C. 19-2-7-17 and I.C. 19-2-7-18), [illegible], the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

9. COUNCILMANIC APPROVAL

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of City, by duly adopted Ordinance, and if such Ordinance is not adopted within a period of ninety (90) days after execution thereof, this contract shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

DEVELOPER:

Nelson R. Minnick

Nelson R. Minnick

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before ne, the undersigned, a Notary Public in and for said County and State, personally appeared Nelson R. Minnick, who acknowledged the execution of the foregoing agreement for sewer extension, as and for his voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 26th day of May, 1978.

Deanna Faust

Notary Public - Deanna Faust

My Commission Expires:

10-11-81

Resident of Allen County, Indiana.

CITY OF FORT WAYNE, INDIANA

BY: Robert Armstrong

Robert Armstrong, Mayor

BOARD OF PUBLIC WORKS:

BY: Henry P. Wehrenberg

Henry P. Wehrenberg, Chairman

BY: Ethel H. LaMar

Ethel H. LaMar, Member

Max G. Scott

Max G. Scott

Approved as to form and legality:

Mary J. Barkes

Associate City Attorney

ATTEST:

Ursula Miller

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State personally appeared Robert E. Armstrong, Henry P. Wehrenberg, Ethel H. LaMar, and Max G. Scott, known to me to be the Mayor, the menbers of the Board of Works of the City of Fort Wayne, Indiana, respectively, and the voluntary act and deed of said City.

WITNESS my hand and motarial seal this 12 day of June, 1970

Notary Public

My Commission Expires:
3/6/80

Resident of Allen County, Indiana.

This instrument prepared by P.R. Boller, P.E. Chief Water Pollution Control Engineer.

TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT FOR SEWER EXTENSION, 2.11 ACRE TRACT, PERRY TWP. LIMA RD. AREA

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS

SYNOPSIS OF ORDINANCE AGREEMENT FOR SEWER EXTENSION FOR 2.11 ACRE TRACT IN THE SOUTHEAST CORNER OF SOUTHWEST QUARTER OF NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 32 NORTH, RANGE 12 EAST, IN PERRY TOWNSHIP; THENCE NORTHERLY, ALONG THE WEST LINE OF SAID 2.11 ACRE TRACT, A DISTANCE OF 200 FEET TO THE POINT OF TERMINATION, NELSON R. MINNICK, DEVELOPER.

(AGREEMENT FOR SEWER EXTENSION ATTACHED)

EFFECT OF PASSAGE CONSTRUCTION OF SEWER TO SERVE ABOVE-DESCRIBED AREA

EFFECT OF NON-PASSAGE INABILITY TO CONSTRUCT SEWER AS PLANNED

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) DEVELOPER TO PAY THE ENTIRE COST & EXPENSE OF CONSTRUCTION OF SAID SEWER

ASSIGNED TO COMMITTEE

EP